

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON STATE/FEDERAL RELATIONS**

**Call to Order:** By **CHAIRMAN AUBYN A. CURTISS**, and **Vice Chairman Carol Juneau**, on February 16, 1999 at 3:05 P.M., in Room 420 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Aubyn A. Curtiss, Chairman (R)  
Rep. Carol C. Juneau, Vice Chairman (D)  
Rep. Jay Stovall, Vice Chairman (R)  
Rep. Matt Brainard (R)  
Rep. Kim Gillan (D)  
Rep. Gary Matthews (D)  
Rep. Dan McGee (R)  
Rep. Karl Ohs (R)  
Rep. Loren Soft (R)  
Rep. Carol Williams (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Gordon Higgins, Legislative Branch  
Deb Thompson, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HJ 19, HJ 26, HJ 11, 2/12/1999  
Executive Action: HJ 10, HJ 11, HJ 19, HJ 26,  
HJ 5

#### **HEARING ON HOUSE JOINT RESOLUTION 19**

**Sponsor:** Rep. Aubyn Curtiss presented the resolution.

**Proponents:** Larry Dolezal, former Lincoln County Commissioner, spoke in support of the resolution. He said there was a profound effect on the local communities with impacts to jobs and the tax base. He said the community already lost two mines and several wood products mills. There is a serious downsizing of job opportunities. Over 1,000 jobs have been lost due to cut backs, which were the best wage jobs. There have been 1/2 the harvests which has impacted the tax base to fund roads and schools. Lands are being designated as wilderness and roadless areas. **{Tape : 1; Side : A; Approx. Time Counter : 2.1 - 10.2}**

Patrick Heffernan, representing the Montana Logging Association and Montana Wood Products, testified in support of the resolution. He commented on the dramatic decline of timber sales. This represents an administration problem in the transition from a revenue generating resource to subsidizing lands that are idled from their intended purpose.

Al Kington, a land use planner from Helena, spoke in favor of the resolutions. He noted the dramatic use of PILT of 46.3%. The road issue is disastrous. This resolution is timely.

**Opponents:** Art Noonan, Sierra Club, had some suggestions. He pointed out the implications were questionable. He felt the resolution was unclear. **{Tape : 1; Side : A; Approx. Time Counter : 16.2 - 20.5}**

**Questions from Committee Members and Responses:** Rep. Gillan asked Mr. Kington about the decoupling effort to overturn the 1908 Forest Reserve Act. Mr. Kington said the decoupling language means that any receipts from the forest would be decoupled to the counties making it an appropriated process rather than a mandatory process, as stated in the 1908 law. This means they take away the revenue sharing portion that the forest service puts into the Treasury. They are going to substitute that by dipping into the taxpayers and saying "we will give you a percentage of the top three years." This is taking it from a revenue generating source to an appropriated source.

**Closing by Sponsor:** Rep. Curtiss closed. She pointed out this was not a proposal to over cut the forest. It is difficult for people who don't live in timber areas to see the mortality rate of the timber far exceeding the harvested board feet of timber. It is a waste and we are not doing our jobs as stewards of our resources when this is permitted to happen. She pointed out the EIS of the Columbia River Basin in which they said it was possible that there would be a number of counties in the basin which would be no longer economically sustainable. With policies such as what we see coming out of the Administration, that is

understandable. There was an recent newspaper article about poverty in Montana counties. It is really noteworthy to see which of those counties are affected. A lot of those are the counties that are dependent on forest receipts and PILT payments back from the federal government because of the land within the county that they administer. **{Tape : 1; Side : A; Approx. Time Counter : 22.8 - 24.6}**

#### **HEARING ON HOUSE JOINT RESOLUTION 26**

**Sponsor:** Rep. Rod Bitney, HD 77, presented the resolution. He said the purpose of this is to get a moratorium regarding road closures on forest service land. The USDA has proposed a moratorium on any road construction. There is also a considerable road obliteration program going on. He described wilderness areas in the Flathead area, 55% of which is tied up. There is a proposal for 650 miles of road destruction just in that forest area. To date there have been 200 miles of road obliterated. In part, this is done supposedly to help the Grizzly Bear habitat. He described what was included in the 4 million acres of timber land. There had been 200 incidents of problem bears in the valley. You would think there would be a food source in that much territory. Timber activity would allow more sunlight, more vegetation and a better food source for the bears. Another serious problem with road obliteration is considerable sedimentation going into the streams. This hurts the bull trout, which gets put on the endangered species. This means a further taking of the use of this land. He pointed out the U.S. has the largest protected wilderness in the world. Most federal land is in the Western U.S. New York has 3% federal land, Montana has 30%, which means people in metro areas dictate policy. He pointed out the forest service claims to have no money for road maintenance but road obliteration can cost \$3,000 per mile.

**Proponents:** Patrick Heffernan, Montana Logging Association and Montana Wood Products, spoke in favor of the resolution. He said obliterating roads was the wrong course of action. Extraction of stream crossing culverts involve massive excavations and it is then difficult to avoid sedimentation. **{Tape : 1; Side : A; Approx. Time Counter : 35.7 - 38.9}**

Larry Dolezal supported the resolution. In the Kootenai National Forest within the Bear Management areas, since the grizzly bear recovery and road management policies there had been an 80% decline of access to suitable timber land. This is very significant. Also, there is more sedimentation generated from road obliteration than road construction and management. He

noted that the largest single recreational activity is motorized access and aesthetic viewing. There is a subsistence level of dependency on public lands as a social, cultural activity, such as huckleberry picking, firewood gathering, fishing and hunting - 60-80% of households depend on access to public lands. **{Tape : 1; Side : A; Approx. Time Counter : 40.5 - 43}**

Don Allen, Western Environmental Trade Association, spoke in support of the resolution. The resolution addresses a lot of uses on national forests. The members of the association are from business, recreation, industry and labor. He said access to public lands is important and stories of road obliteration are disturbing. **{Tape : 1; Side : A; Approx. Time Counter : 43 - 46}**

Rep. Aubyn Curtiss read a prepared statement. She was in strong support of the resolution. "By executive and administrative fiat, the agencies which are the stewards of public lands have broken faith with the people of America. They have demonstrated arrogant disregard to the rights of individuals and the economies of the entire region. Having been a member of the study group monitoring the Columbia River Basin Project, I have become increasingly concerned about proposals such as this moratorium which has evolved because of the vision of the Clinton-Gore administration relative to resource restoration. Each succeeding directive is a blatant departure from what is a national policy. Each depends more on Congressional subsidies to replace resource generated dollars and portions of each are being implemented before a record of decision has been reached. Currently, the Mountain State Legal Foundation has become involved relative to the Columbia River Basin implementation of some of those positions without a record of decision ever being reached. There are communities, such as Libby, who have also joined in. Lack of information regarding the extent of the road obliterations make it impossible to know how many capital investments of taxpayers dollars have been utterly destroyed. How many miles have been removed from the forest transportation system and at what cost? We have filed a Freedom of Information Act in Lincoln County over a year ago and did get back some statistics after some time. At the end of the report it said this table is not accurate because many roads already treated will not show up as obliterated until they have been removed from the next years inventory. Apparently that information is not currently available to the public. What we do know is that the moratorium would create defacto wilderness of millions of acres of public land. It invalidates the efforts of thousands of knowledgeable forest planners who have spent countless hours developing forest plans to accommodate site specific conditions in an environmentally friendly manner. It makes an exercise in futility the countless times the public has spent responding to... the proposal. Declaration of a roadless

moratorium for purpose of studying road related problems is a travesty, in view of the fact that Ranger Districts throughout the Northwest seem to be already obliterating roads as fast as possible. In many instances, the obliteration practices are creating more erosion and other soil disturbances than had the roads been simply abandoned until perhaps they could be used again under emergency or other policy determinations. Such destruction of forest access will severely limit the ability of forest managers to fight fire or carry out sound reforestation practices in a fiscally reasonable manner. What the public finds most unacceptable is the fact that the forest transportation system is being eroded without any plan for restoration. Tourism is being touted as an economic substitute for resource utilization. That is totally unrealistic, in view of the fact that the agencies own statistics indicate that 80% of recreation is driving for pleasure. Will that driving be limited to I-90, U.S. 93, U.S. 2 or maybe Montana 37? By placing eco-system management as the highest priority on their Agenda 21 Program, the forest service and BLM have ignored the provisions in the Organic Act. Their zeal to restore forests and control watersheds have made them oblivious to Congressional mandates to "protect heritage, customs and culture" as set forth in the National Environmental Policy Act and many other provisions of federal law. The Organic Act specifies "no national forest shall be established except to improve and protect the forest within the boundaries or for the purpose of securing favorable conditions of water flows and to furnish a continuous supply of timber for the use and necessities of citizens of the United States."

**Opponents:** None

**Questions from Committee Members and Responses:** Rep. McGee asked if this would authorize a road moratorium. Rep. Bitney said it would request that we go back to a multiple use management rather than absolute preservation and blocking off the people. ***{Tape : 1; Side : A; Approx. Time Counter : 52.2 - 53.5}***

Rep. Juneau asked for clarification of "defacto" roadless areas. Rep. Bitney replied defacto means the roads would become wilderness with no access to them. Roads are being obliterated and gates are being put up so people have no access, so in effect the area becomes wilderness.

Rep. Gillan asked for clarification on moratoriums since there were two identified in the resolution. Rep. Bitney replied the goal of this resolution is to have a moratorium on the destruction, closure or gating of existing roads. The United States Department of Agriculture and the U.S. Forest Service has

proposed a moratorium or a stoppage of creating any new roads. Mr. Heffernan clarified the federal moratorium was released in January as part of the federal register. That one puts a stop to road building and defines new roadless areas as any land more than 1/4 mile from an existing road. **{Tape : 1; Side : A; Approx. Time Counter : 53.5 - 60}**

**Closing by Sponsor:** Rep. Bitney closed. He cited statistics regarding the enormity of Montana land included in the moratorium. He pointed out the need for proper management and the concerns with the increase of the preservationist movement. The lack of management will lead to fuel loading, increased fire sources, wind fall and stream sedimentation problems. There are already 24 small mills out of business who paid an average wage of \$10 an hour, replaced with seasonal and service industry jobs. If small planes go down or there are forest fires, there will be no access roads to reach them. **{Tape : 1; Side : B; Approx. Time Counter : 0 - 14.4}**

#### **HEARING ON HOUSE JOINT RESOLUTION 11**

**Sponsor:** Rep. Aubyn Curtiss, HD 81, presented the resolution. The resolution would reaffirm the ability and constitutional authority of Montana to have some determination over waters. Part of the reason for this was due to the task force that was formed on river governance in response to the Columbia River activity. **{Tape : 1; Side : B; Approx. Time Counter : 15.3}**

**Proponents:** Don MacIntyre, attorney for Department of Natural Resources and Conservation, spoke in favor of the resolution. The bill will reemphasize what is the law in the arid West. The system of law developed differently than back East. The Western States Water Council adopted a similar resolution that asked the federal government to abide by the law of appropriation in the arid West, which is the prior appropriation doctrine. It is the way the arid West can control the resources within its boundary. **{Tape : 1; Side : B; Approx. Time Counter : 16.6}**

Mike Murphy, Montana Water Resources Association, spoke in support of the resolution. He emphasized the importance of securing the states rights pertaining to water law and water rights. The reason is the Clean Water Act, Endangered Species Act and other private property rights acts are being looked at and negotiated through the federal processes. It is important for Montana to take a strong position in regards to its rights. **{Tape : 1; Side : B; Approx. Time Counter : 18.2-19.3}**

Jennifer Salisbury, Montana Stockgrowers Association, was in support. Congress under a variety of federal laws have referred to the states the ability to control and develop water rights. There is concern how federal agencies may use the Endangered Species Act and the Clean Water Act to encroach on the states rights and prerogatives to allocate water. This resolution would send a strong message to Congress to continue to deferring authority to Western states on their specific water issues. She urged support of this resolution. **{Tape : 1; Side : B; Approx. Time Counter : 18.2 - 20.1}**

Larry Dolezal, former Commissioner from Lincoln County, spoke in favor of the resolution. He gave an example where the Endangered Species Act and a competing recovery program impacted each other adversely. The only sound science generated in the debate was by the state of Montana who won a recent case against the federal government.

**Opponents:** None.

**Questions from Committee Members and Responses:** Rep. Juneau asked about impacts to the tribal lands or the water rights compact. Mr. MacIntyre replied this had no effect on the Reservation.

**Informational Witness:** Mark Weller, Bonneville Power Administration, spoke as an informational witness. He said the company markets the power that is generated at the federal hydro power projects. He said they were not the only federal agency influenced by this resolution. The Corp of Engineers owns Libby Dam and they are responsible for flood control. The Bureau of Reclamation owns Hungry Horse Dam. The U.S. Fish and Wildlife Service is responsible for water management activities associated with resident fish species. The National Region Tree Services is associated with ocean fish species and the Environmental Protection Agency is responsible for the water quality issues. **{Tape : 1; Side : B; Approx. Time Counter : 20.1 - 24.9}**

**Closing by Sponsor:** Rep. Curtiss closed.

#### **EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 10**

Rep. McGee **MOVED DO PASS.** Rep. Curtiss said Gordon Higgins had some updates on the Biosphere Reserves from the Internet and also two amendments. **{Tape : 1; Side : B; Approx. Time Counter : 27}**

Gordon Higgins discussed the amendments. **EXHIBIT(sfh38a01)**

Rep. Curtiss **MOVED DO PASS AS AMENDED.** The question was called.  
The motion **PASSED** 6-4.

**EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 11**

Rep. McGee **MOVED DO PASS.** {Tape : 1; Side : B; Approx. Time  
**Counter : 31}** He presented amendments. **EXHIBIT(sfh38a02)** Rep.  
McGee moved the amendments. The question was called. The motion  
**PASSED** unanimously.

The question was called on the bill as amended. The motion  
**PASSED** 9-1.

**EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 19**

Rep. McGee **MOVED DO PASS.** He presented amendments.  
**EXHIBIT(sfh38a03)** Gordon Higgins explained the amendments. Rep.  
Curtiss **MOVED** the amendments.

Rep. Matthews pointed out the amendments toned it down better so  
it was not as demanding.

The question was called on the McGee amendment. The motion  
**PASSED** unanimously.

Rep. McGee **MOVED DO PASS AS AMENDED.** The motion **PASSED** 9-1.

**EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 26**

Rep. McGee **MOVED DO PASS.** The motion **PASSED** unanimously. Rep.  
McGee **MOVED DO PASS AS AMENDED.** The motion **PASSED** 8-2.

**EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 5**

Rep. McGee **MOVED HJ5 OFF THE TABLE.** Rep. Gillan said she did not  
like the "in your face" tone. She pointed out the Brady Bill was  
in law now and there was no reason to focus on the past.

The question was called. The motion **PASSED.** Rep. McGee **MOVED DO  
PASS.** The question was called. The motion **PASSED** 6-3.



**ADJOURNMENT**

Adjournment: 5:20 P.M.

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REP. AUBYN A. CURTISS, Chairman

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DEB THOMPSON, Secretary

AC/DT

**EXHIBIT (sfh38aad)**